Calendar No. 514

110TH CONGRESS *1st Session*	SENATE	REPORT 110–233

TRAVEL PROMOTION ACT OF 2007

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1661

NOVEMBER 27 (legislative day, NOVEMBER 16), 2007.—Ordered to be printed

Filed, under authority of the order of the Senate of November 16, 2007

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

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Mr. INOUYE, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1661]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1661) to communicate United States travel policies and improve marketing and other activities designed to increase travel in the United States from abroad, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of the Travel Promotion Act of 2007, as reported, is to increase international travel to all areas of the United States, communicate U.S. travel policies overseas, and make entry procedures into the United States more efficient and welcoming.

BACKGROUND AND NEEDS

Travel and tourism generates approximately $1.3 trillion in economic activity in the United States every year. The U.S. travel and tourism industry is one of the Nation's largest employers with approximately 8.3 million direct travel-generated jobs. According to the Department of Commerce (DOC), international travel receipts (travel-related tourism spending, including passenger fares) in the United States were $107.8 billion in 2006, which surpassed the previous record of $103.1 billion set in 2000. In 2006, foreign travelers spent $7.5 billion more in the United States than U.S. travelers spent abroad. Travel and tourism exports accounted for seven percent of all U.S. exports and 26 percent of services exports. Ac-

cording to the Travel Industry Association of America (TIAA), an increase of one percent in international travel market share would produce a $3 billion increase in payroll receipts.

While the tourism industry continues to be vital to the U.S. economy, the Nation's share of the world market of international tourism is in decline. According to the TIA, the global international travel market has increased by 20 percent since 2000. During this same period, however, overseas travel to the United States has declined by 17 percent and this decline has resulted in a loss of nearly 200,000 jobs, $94 billion in visitor spending, and $16 billion in Federal, State and local tax receipts. In 1992, according to the DOC, the United States attracted 9.4 percent of all international tourist arrivals from around the world. In 2004, the United States attracted only 6 percent of total international arrivals. While the 2006 trade surplus related to tourism is $7.5 billion, the 1992 surplus was $22.2 billion. Trade and tourism officials and experts note two issues that have contributed to the decline and need to be addressed: (1) the lack of a coordinated international tourism advertising campaign; and (2) the increased difficulty for international visitors to gain entry to the United States.

The Federal government recognizes the importance of travel to the U.S. economy. The DOC has taken an active role to promote international travel to the United States, but emphasis on specific promotions has fluctuated over time. In addition, following September 11, 2001, the U.S. government has increased border security, which has resulted in a significant decrease in the number of visitors to the United States. Recently, the State Department and the Department of Homeland Security (DHS) have recognized the need to make the visa and entry process more efficient and welcoming for foreign visitors, while maintaining border security. In 2006, Secretary of State Condoleeza Rice and Secretary of Homeland Security Michael Chertoff initiated a joint agreement, the Rice-Chertoff Joint Vision to Ensure Secure Borders and Open Doors, to utilize technology and eliminate inefficiencies to improve both international travelers' ability to participate in U.S. tourism and border security.

Despite ongoing Federal efforts, business leaders across multiple industries note the continued loss of international travelers to other destinations. Two comprehensive reports recommended reforms needed to regain international arrivals. The United States Travel and Tourism Advisory Board (USTTAB) issued its report to the DOC on September 5, 2006. The Discover America Partnership (DAP), an organization comprised of a number of leaders from the travel and tourism industries, released its report on January 31, 2007.

History of Federally Funded International Travel Promotion. Federal promotion of tourism in the United States dates back to the establishment of the United States Travel Bureau in 1937. However, only in the past 40 years has the DOC had an office or administration that promotes U.S. tourism to foreign citizens through coordinated advertising. Enacted in 1961, the International Travel Act required the Secretary of Commerce, through the establishment of the United States Travel Service (USTS), to carry out a program to encourage travel to the United States by persons from foreign countries. Appropriations directed to the USTS increased

until 1977, when Congress and the White House began scaling back the government's role in advertising. Federal funding for advertising was eliminated in 1996, when Congress abolished the United States Travel and Tourism Administration, the successor of the USTS.

Between 2001 and 2003, total tourism receipts dropped almost 12 percent, and tourism related industries lost approximately 390,000 jobs. Congress decided to reinitiate Federal tourism advertising in 2003 in response to the downturn. The fiscal year (FY) 2003 Consolidated Appropriations Resolution (P.L. 108–7, Sec. 210), authorized the Secretary of Commerce to "award grants and make direct lump sum payments in support of an international advertising and promotional campaign developed in consultation with the private sector to encourage individuals to travel to the United States consisting of radio, television, and print advertising and marketing programs." This law also established the USTTAB and provided a one-time $50 million appropriation.

The USTTAB is comprised of 14 senior travel and tourism executives from across the United States. These members advise Secretary of Commerce Carlos Gutierrez on how to best increase the number of international visitors to the United States and ensure that the share of the country's international receipts continues to grow. In addition, the board advises the Secretary on the creation of a national tourism policy. The USTTAB planned an advertising campaign called "Visit America." The DOC Office of Travel and Tourism Industries (OTTI) was responsible for overseeing this campaign.

Initially, the OTTI planned to target five countries (Canada, Germany, Japan, Mexico, and the United Kingdom) with advertisements, but Congress rescinded $44 million in the FY 2004 Consolidation Appropriations Act (P.L. 108–199). The OTTI used the remaining $6 million on an advertising campaign focused at the United Kingdom alone. In the fall of 2004, the FY 2005 Consolidation Appropriations Act (P.L. 108–447) gave an additional $10 million to the program, allowing the OTTI to expand the advertising campaign to Japan in 2005. In December 2005, Congress appropriated another $4 million in the FY 2006 Science, State, Justice, Commerce, and Related Agencies Appropriations Act (P.L. 109–108), providing a total of $20 million for the campaign to date. On January 31, 2007, the DOC announced a $3.9 million cooperative agreement with the TIA to develop a destination website for the United States. TIA will create and market multi-language consumer-focused Web sites that will encourage leisure travel to the United States from a broad range of important markets.

USTTAB Report. The USTTAB report, entitled "Restoring America's Travel Brand: A National Strategy to Compete for International Visitors," recommended actions in four areas to help improve America's standing in the international travel market: (i) creating a stronger voice for travel in government; (ii) making the arrival experience of travelers more welcoming; (iii) removing unnecessary barriers to travel; and (iv) avoiding inappropriate taxes, fees, and regulations on travelers.

The USTTAB report found that the countries that claim the largest share of the growth in the international travel market are those that have ministries of tourism or other governmental entities that

help coordinate tourism policy decisions. The United States, by contrast, has no dedicated office of tourism or official to advocate at the highest policy levels. The USTTAB report recommended the creation of an office with the power to coordinate government policy to enhance the Nation's competitive standing in the global travel market. That Federal office would serve as an institutional home and voice for the industry; energize interagency communication regarding travel and tourism; identify existing private sector advisory committees and share their input across agencies, industry, and the public; and coordinate the roles of other government agencies to more effectively expand travel and tourism promotion, and address infrastructure needs and development.

The report contained numerous suggestions on making the first arrival experiences of international travelers more welcoming. The USTTAB recommended fully staffing the Customs and Border Patrol (CBP) and the Transportation Security Administration (TSA) to reduce wait times at inspection points. Members of the USTTAB and other industry participants offered their expertise in managing waiting lines and staffing patterns to Federal agencies interfacing with travelers. The TIA entered discussions with the Under Secretary of State for Public Diplomacy and Public Affairs in that effort. The travel and tourism industry also has offered to advise Federal agencies on signage and the use of international symbols to direct and prepare travelers for the inspection process.

The USTTAB report also recommended removing unnecessary barriers to travel. The USTTAB noted that the Nonimmigrant Visa Program is understaffed and cited a General Accountability Office report that found almost half of the Department of State's 211 visa-issuing posts reported maximum wait times for visa interviews of 30 days or more. The USTTAB was particularly concerned about the long waits in Brazil, China, India, Mexico, and Venezuela.

Finally, the USTTAB report argued that Federal, State, local, special entity, and foreign-government imposed taxes and fees on rental cars, commercial aviation, hotels, and restaurant meals, among other services, increase the cost of travel and can dampen demand for inbound travel. In the report, the USTTAB asked the DOC to advocate against discriminatory taxing structures and to work within the interagency process to discourage travel taxes imposed by international authorities when the revenue raised has no clear benefit or connection to the travel and tourism industry.

DAP Report. In 2006, the DAP was formed to examine the reasons for, and to develop policy recommendations to reverse, the decline in international travelers that started after September 11, 2001. On January 31, 2007, the DAP released a report entitled "A Blueprint to Discover America." The report offers a three-point plan to increase foreign travel to the United States. Specifically, it calls for the creation of a marketing and communications program, modernization of U.S. ports of entry, and reform of the visa system.

The DAP report recommended that the United States develop a robust and coordinated international traveler promotion campaign to compete with similar programs run by other countries. The report found that such a program should develop and implement a strategy that disseminates information about the improvements in the U.S. visa process and welcomes travelers to the United States; create a public-private partnership to help market and promote the

United States abroad; and be based on a dependable funding source.

The DAP also recommends establishing a model port of entry program at the 12 busiest airports. It suggests that such a program should be designed to decrease average processing time by hiring more CBP officers; expand the use of technology and improve CBP and TSA coordination; work with the private sector to improve customer service; and create a registered traveler program for trusted, low-risk foreigners.

In addition, the DAP report focuses on delays in the visa application and processing system as a barrier to international travelers coming to the United States. The report recommends that the Federal government take steps to reduce visa applicant wait times to 30 days or less; strengthen security by both collecting traveler biometric information, including a full set of fingerprints, and creating a better exit tracking system; and increase the number of countries eligible for the visa waiver program.

SUMMARY OF PROVISIONS

S. 1661 would establish a nonprofit corporation (Corporation) to create and execute a nationally-coordinated travel promotion program. The purpose of the program would be to accurately communicate the Nation's travel policies, to encourage travel to the United States, and to provide international exposure for areas of the United States that do not have the resources to promote themselves overseas. The Corporation would be governed by a 15 member board of directors appointed by the Secretary of Commerce, which consists of representatives from States, the Federal government, higher education, and the travel industry. In the first year, the Corporation would be permitted to borrow start up funds from the Treasury, which would be paid back with interest over the course of five years. In subsequent years, the Corporation would be entitled to receive matching Federal funds from moneys collected from travelers under the Electronic Travel Authorization system to be established by the DHS. In order to be entitled to receive Federal funding, the Corporation would be required to raise non-Federal money and in-kind matching contributions at the rate of 50 percent in fiscal year 2009 and 100 percent in the subsequent years.

In addition, the Travel Promotion Act would establish an office in the DOC known as the Office of Travel Promotion headed by the Under Secretary of Travel Promotion. The Under Secretary would serve as a liaison to the Corporation, work with the Secretaries of State and Homeland Security to ensure that international visitors are processed efficiently, and promote travel to the United States.

Finally, S. 1661 would direct the Secretary of Homeland Security to establish a model ports-of-entry program for the purpose of providing a more efficient and welcoming international arrival process and to implement the program initially at the 20 U.S. international airports that have the highest number of foreign visitors arriving annually.

LEGISLATIVE HISTORY

The Commerce Committee held two hearings this session examining travel promotion. The first hearing was a full Committee hearing held on January 31, 2007, and chaired by Senator Byron Dorgan. The Committee heard testimony regarding the industry's perspective on the health of the travel industry and what legislative initiatives should be taken to strengthen the national economy without decreasing domestic security. The second hearing was held on March 20, 2007, in the Interstate Commerce, Trade, and Tourism Subcommittee. The Subcommittee heard testimony from representatives from the DOC, DHS, and State Department as well as representatives of State tourism agencies regarding their perspectives as to the state of the travel industry, difficulties that travelers face coming to the United States, and recommendations for encouraging international travel to America.

On June 19, 2007, Senator Dorgan introduced S. 1661, the Travel Promotion Act of 2007, which was referred to the Committee on Commerce, Science, and Transportation. Chairman Inouye and Vice Chairman Stevens were original cosponsors of the measure. When S. 1661 was considered in executive session, Senators Smith, Kerry, Ensign, Pryor, Lautenberg, and Martinez were also cosponsors of the legislation. The bill has 27 cosponsors in all as of the date on which this report was filed.

On June 27, 2007, the Committee met in an open executive session to consider S. 1661. Chairman Inouye offered an amendment that made technical corrections to the legislation and clarified that the Corporation would be required to repay any borrowed startup funds from the Treasury with interest. An amendment by Vice Chairman Stevens was accepted to replace section 5 of the Act and insert language that would amend the Immigration and Nationality Act by authorizing the Secretary of Homeland Security to develop and implement a fully automated electronic travel authorization system to collect such basic biographical information as the Secretary of Homeland Security determines is necessary in advance of admitting a foreign traveler to enter the United States under the visa waiver program. The Stevens amendment would further authorize the Secretary of Homeland Security to charge users a fee to access the electronic travel authorization system. The fee would be used to cover the costs of administering the system and also would include an amount of no more than $10 per user that would be transferred to a fund in the Treasury that could be used to match industry contributions to the Corporation. Finally, the Stevens amendment would create a new section 9, which would direct the Secretary of Homeland Security to establish a model ports-of-entry program for the purpose of providing a more efficient and welcoming international arrival process and to implement the program initially at the 20 U.S. international airports that have the highest number of foreign visitors arriving annually and, subject to appropriations, to employ not fewer than an additional 200 CBP officers not later than the end of fiscal year 2008 for use at those airports. Senator Lautenberg offered an amendment to add one representative of the intercity passenger railroad business to the Corporation board. The Inouye, Stevens, and Lautenberg amendments were accepted en bloc.

Senator Sununu offered an amendment to strike section 5 of the Act which, as amended by the manager's amendment, would authorize the Secretary of Homeland Security to develop and implement a fully automated electronic travel authorization system to collect basic biographical information from travelers under the visa waiver program and to impose a fee on each user of the system. The Sununu amendment was defeated by voice vote.

Senator DeMint offered an amendment that would prohibit the imposition of a fee under section 5 of the Act unless the Secretary of State certifies in writing to the Secretary of Commerce that the time for processing visas has been significantly reduced so that travel is not discouraged and the Secretary of Homeland Security certifies to the Secretary of Commerce that significant improvements have been made in the processing of the arrival of international travelers. The DeMint amendment was defeated by voice vote.

By voice vote, the bill, as amended, was ordered reported.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

NOVEMBER 16, 2007.

Hon. DANIEL K. INOUYE,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1661, the Travel Promotion Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 1661—Travel Promotion Act of 2007

Summary: S. 1661 would establish a new organization, the Corporation for Travel Promotion (the Corporation), to promote international tourism in the United States. The Corporation would be funded through amounts borrowed from the Treasury, assessments on private firms operating in the travel industry, and new fees charged to users of the visa waiver program.

Under S. 1661, all amounts available to the Corporation would be recorded as deposits into a new fund in the Treasury, and the Corporation would be authorized to spend amounts in that fund. CBO estimates that assessments imposed by the Corporation would increase revenues by an estimated $62 million over the 2009–2012 period and $145 million over the 2008–2017 period, net of income and payroll tax offsets. CBO also estimates that enacting S. 1661 would increase direct spending by $3 million in 2008, $65 million over the 2008–2012 period, and $180 million over the 2008–2017 period.

The bill also would establish the Office of Travel Promotion in the Department of Commerce (DoC) to develop programs to increase the number of international travelers coming to the United States and authorize the Office of Travel and Tourism Industries to expand its research activities. Finally, S. 1661 would authorize DHS to develop a program to improve the arrival process for international travelers in U.S. airports and to employ more customs officers at certain airports.

Based on information from DoC and DHS, CBO estimates that implementing S. 1661 would increase discretionary spending by about $38 million in 2008 and $282 million over the 2008–2012 period, assuming appropriation of the necessary amounts.

S. 1661 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no cost on state, local, or tribal governments.

In the event that the Corporation imposes an assessment on firms in the travel industry, S. 1661 would impose a private-sector mandate, as defined in UMRA, on the members of the industry who would be required to pay such an assessment. The Corporation could compel the payment of any assessments through the federal courts. Based on information from industry sources, CBO estimates that the cost to comply with the mandate would fall well below the annual threshold for private-sector mandates established by UMRA ($131 million in 2007, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1661 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit) and 750 (administration of justice).

Basis of estimate: CBO expects that the cash flows related to the Corporation would appear on the budget as governmental receipts and direct spending because S. 1661 specifies that the Corporation's finances would operate through the U.S. Treasury, and its assessments would stem from an exercise of the sovereign power of the federal government.

For this estimate, CBO assumes that the bill would be enacted early in fiscal year 2008 and that the necessary amounts would be appropriated at the start of each fiscal year.

Revenues

S. 1661 would authorize the Corporation to impose an annual assessment on certain sectors of the travel industry, pending approval in a referendum by members of the travel industry. The Corporation also would be authorized to accept voluntary contributions from private sources either in cash or, with limitations, in goods and services. Such assessments and any voluntary contributions would be recorded on the federal budget as additional revenues.

CBO assumes that the annual assessment on the travel and tourism industry would total $20 million in 2009 as authorized by the bill. In subsequent years, CBO assumes that industry assessments would increase at the rate of inflation. We do not expect that the industry would make voluntary contributions that would substantially raise the Corporation's revenues above $20 million per year.

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF S. 1661

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN REVENUES [1]					
Estimated Revenues	0	15	15	16	16
CHANGES IN DIRECT SPENDING [1]					
Estimated Budget Authority	10	20	20	21	11
Estimated Outlays	3	14	14	19	15
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Department of Commerce:					
Office of Travel Promotion:					
Estimated Authorization Level	4	6	6	6	6
Estimated Outlays	3	5	5	6	6
Office of Travel and Tourism Industries:					
Estimated Authorization Level	5	9	14	15	17
Estimated Outlays	4	8	13	14	16
Department of Homeland Security:					
Additional CBP Officers:					
Estimated Authorization Level	14	22	23	23	24
Estimated Outlays	13	21	23	23	24
Improved Airport Inspections:					
Estimated Authorization Level	20	20	20	20	20
Estimated Outlays	18	20	20	20	20
Total Changes					
Estimated Authorization Level	43	57	63	64	67
Estimated Outlays	38	54	61	63	66

[1] See Table 2 for changes in direct spending and revenues over the 2008–2017 period.

Gross assessments of about $20 million annually would be partially offset by a loss of receipts from income and payroll taxes of 25 percent. Because excise taxes and other indirect business taxes reduce the tax base of income and payroll taxes, higher amounts of those taxes would lead to reductions in income and payroll tax revenues. As a result, CBO estimates that enacting S. 1661 would increase net revenues by $62 million over the 2008–2012 period and $145 million over the 2008–2017 period.

Direct spending

CBO assumes that the Corporation would exercise its borrowing authority in fiscal year 2008 to cover about $10 million in start-up and operating expenses. We assume that the Corporation would begin collecting assessments in 2009 and that it would spend the income from fees and assessments mostly in the year they are collected. CBO estimates that enacting S. 1661 would increase direct spending by $3 million in 2008, $65 million over the 2008–2012 period, and $180 million over the 2008–2017 period.

TABLE 2.—CHANGES IN DIRECT SPENDING AND REVENUES UNDER S. 1661

	By fiscal year, in millions of dollars—											
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008–2012	2008–2017
CHANGES IN REVENUES												
Changes in Revenues	0	15	15	16	16	16	16	17	17	17	62	145
CHANGES IN DIRECT SPENDING												
Gross Changes in Direct Spending:												
Estimated Budget Authority	10	30	40	42	32	21	22	22	23	23	154	265
Estimated Outlays	3	24	34	40	36	27	23	22	22	21	137	252
Offsetting Receipts (DHS Visa Waiver Fees):												
Estimated Budget Authority	0	−10	−20	−21	−21	0	0	0	0	0	−72	−72
Estimated Outlays	0	−10	−20	−21	−21	0	0	0	0	0	−72	−72
Net Changes in Direct Spending:												
Estimated Budget Authority	10	20	20	21	11	21	22	22	23	23	82	193
Estimated Outlays	3	14	14	19	15	27	23	22	22	21	65	180

For fiscal years 2009 through 2012, funds collected through an industry assessment (and any voluntary contributions) would be available to the Corporation to spend on its authorized activities and would be matched by a new fee that the Department of Homeland Security (DHS) would collect from users of the visa waiver program. Those fees would be available to the Corporation only to the extent that the Corporation provides matching funds from its assessments on industry participants and voluntary contributions. In 2009, fees could total up to 50 percent of private funds; in subsequent years, fees would have to be matched dollar-for-dollar with private funds. Based on its estimate that assessments would total $82 million over the 2009–2012 period, CBO estimates that the new DHS fees would bring in $72 million during that period. Fees collected under the visa waiver program are classified as offsetting receipts (a credit against direct spending). CBO assumes that the additional fees authorized by S. 1661 would receive the same budgetary treatment.

Spending subject to appropriation

Section 7 of S. 1661 would create the Office of Travel Promotion (OTP) to, among other things, serve as a liaison to the Corporation for Travel Promotion and to produce and distribute information about admission procedures for international travelers. Based on information from DoC, CBO estimates that the agency would hire 25 additional full-time employees to set up the OTP and undertake the duties outlined in the bill. CBO estimates that creating the OTP would cost $3 million in 2008 and $25 million over the 2008–2012 period, assuming appropriation of the necessary amounts.

Section 8 would broaden the research activities of the Office of Travel and Tourism Industries (OTTI) in the Department of Commerce. The bill would require OTTI to expand access to certain data, revise a survey of international travel patterns, and develop state-by-state estimates of foreign travel expenditures. Based on information from DoC, CBO estimates that the new requirements would cost $4 million in 2008 and $55 million over the 2008–2012 period, assuming appropriation of the necessary amounts.

Section 9 would direct DHS to hire an additional 200 Customs and Border Protection (CBP) officers during fiscal year 2008. Based on information from CBP, CBO estimates that the increase in staff would cost about $22 million annually, beginning in fiscal year 2009, including salaries, benefits, training, equipment, and support costs.

Section 9 also would direct DHS to establish a program to improve the inspection procedures and the treatment of passengers arriving at U.S. airports from overseas. The program would be implemented at the 20 airports with the highest number of foreign visitors. Based on information from DHS, CBO estimates that the program would cost $20 million annually (about $1 million for each airport).

Estimated Impact on State, Local, and Tribal Governments: S. 1661 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated Impact on the Private Sector: The bill would authorize the Corporation to impose an annual assessment on certain U.S. members of the travel and tourism industry, provided industry

members approve the assessment in a referendum. In the event that such an assessment is approved, S. 1661 would impose a private-sector mandate on the members of the international travel and tourist industry who would be required to pay the assessment. Based on information from sources in the travel industry, CBO estimates that payments of such assessments would total about $20 million per year, well below the annual threshold for private-sector mandates established by UMRA ($131 million in 2007, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Susan Willie and Mark Grabowicz; Federal Revenues: Mark Booth; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis; G. Thomas Woodward, Assistant Director for Tax Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The formation of the Corporation would require representatives of various sectors of the travel industry to participate on its board of directors. The general travel and tourism industry will not be impacted by S. 1661 directly, unless the Corporation chose to initiate a referendum under Section 6. At that point, impacted members of the travel and tourism industry would participate in a referendum and, if an assessment is approved, pay the assessment. Fees would be assessed on users of the electronic travel authorization system who are not U.S. citizens.

ECONOMIC IMPACT

S. 1661 is not expected to have an adverse impact on the Nation's economy. Rather, promoting international travel to the United States through the creation of the Corporation, establishing an Under Secretary of Travel Promotion within the DOC, and establishing a model port of entry program should increase the number of international travelers to America, which will result in economic growth in the travel industry.

PRIVACY

S. 1661 would have no anticipated impact on the privacy rights of individuals.

PAPERWORK

In general, there will not be an increase in paper work for members of the travel and tourism industry. If the Corporation initiates a referendum and assessment under Section 6, then affected companies would need to submit associated paperwork.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title; Table of Contents.

The section would cite the short title of the bill as the as the "Travel Promotion Act of 2007" and provide a table of contents.

Section 2. The Corporation for Travel Promotion.

The section would establish the Corporation for Travel Promotion as a nonprofit corporation governed by a 15 member board of directors appointed by the Secretary of Commerce. The members would represent State and local interests; the Federal government; the higher education community; the small business community; hotels, restaurants, and retail businesses; passenger air transportation; attractions and recreational businesses; the intercity passenger railroad business; and car rental businesses. The members of the board would be required to have professional expertise in travel and international travel promotion and marketing, and to broadly represent all regions of the United States. No member of the board would be considered a Federal employee by virtue of his or her service on the board.

The board would appoint a President and other officers. No political test or qualification shall be used in personnel actions with respect to officers or employees of the Corporation. The Corporation would be prohibited from contributing to or otherwise supporting any political party or candidate for elective public office.

The Committee further intends that the Corporation not engage in activities to directly or indirectly influence funding legislation.

The Corporation would be required to develop and implement a plan to: (1) provide information to travelers, tour operators, and other international travel stakeholders, including materials provided by the Federal government concerning entry requirements and other information that would allow travelers to better navigate the process of entering the United States; (2) counter and correct international misperceptions regarding U.S. travel policy; (3) maximize the economic and diplomatic benefits of travel to America through promotional activities; (4) ensure that international travel benefits all 50 states and the District of Columbia, including areas not traditionally visited by international travelers; and (5) prioritize the use of Corporation resources towards countries and potential travelers that are most likely to travel to America. In order to carry out its mission, the Corporation would be empowered to contract with public and private entities, hire or accept voluntary services of consultants and experts, and to take such other actions as may be necessary. Promotional expenditures of more than $25,000,000 would need to be authorized by a vote of at least two-thirds of the board at a meeting at which eight of more members are present.

Meetings of the board would have to be open to the public with the limited exception that portions of a meeting may be closed for the period of time necessary to preserve the confidentiality of commercial or financial information, to discuss personnel matters, or to discuss legal matters. An independent accounting firm would have to conduct an annual audit of the Corporation's operations, and the Corporation would be required to provide the Comptroller General full and complete access to its books and records.

Section 3. Accountability Measures.

The section would require the Corporation's board to establish annual objectives for the Corporation subject to approval by the Secretary of Commerce and establish a marketing plan for each fiscal year. It also would be required to submit an annual budget to the Secretary with an explanation of any expenditure in excess of $5 million, which would be made available to the public. The Corporation would submit an annual report to the Secretary of Commerce for transmittal to Congress detailing its operations, activities, financial conditions, and accomplishments as well as an objective and quantifiable measurement of the Corporation's progress on an objective-by-objective basis and an explanation of the reason for any failure to achieve an objective established by the board and making appropriate recommendations.

Section 4. Matching Public and Private Funding.

The section would establish a fund in the Treasury known as the Travel Promotion Fund (Fund). For FY 2008, the Corporation would be permitted to borrow from the Treasury beginning on October 1, 2007, up to $10 million to cover its initial expenses and activities under the Act. The borrowed funds would have to be repaid with interest by the Corporation before October 1, 2012. Subsequently, the Secretary of Treasury would transfer not more than $100,000,000 in fees collected pursuant to section 5 of the Act to the Fund. Based on the amount of private industry contributions raised by the Corporation, the Secretary of the Treasury could distribute to the Corporation matching moneys from the Fund. At least 20 percent of the private-sector contributions would have to be in cash and remaining contributions may be in-kind contributions such as television advertising time, advertisement space, or services calculated at the fair market value of such goods or services. The Corporation would have the right to refuse any contribution that is not useful or is inappropriate. For FY 2009, the Corporation would provide matching funds from non-Federal sources equal to 50 percent of the amount received from the government. After FY 2009, the Corporation would provide matching funds from non-Federal sources equal to 100 percent of the amount received from the government. To the extent that industry contributions entitle the Corporation to more matching money than is available in the Fund in a given year, the value of contributions would be carried forward for matching purposes in subsequent years.

Section 5. Electronic Travel Authorization System.

The section would amend the Immigration and Nationality Act to authorize the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a fully automated electronic travel authorization system to collect such basic biographical information as the Secretary of Homeland Security deems necessary to determine in advance the eligibility of a foreign traveler to enter the United States under the visa waiver program. The section further would authorize the Secretary of Homeland Security to charge users a fee to use the electronic travel authorization system. The fee would be used to cover the costs of administering the system and also include an assessment of no more than $10 per user that would be transferred to the Fund. The Secretary

of Homeland Security, in consultation with the Secretary of State, would prescribe regulations that provide the period, not to exceed three years, during which a determination of eligibility under the program would be valid. The section would prohibit any judicial review of eligibility determinations and require a report to Congress regarding the implementation of the system. The section would also authorize the appropriation of funds necessary to establish the electronic travel authorization system.

Section 6. Assessment Authority.

The section would authorize the Corporation to impose an annual assessment under specific conditions on certain sectors of the private travel industry in the United States, other than higher education, passenger air transportation business, and small businesses. The initial assessment would be capped, in the aggregate, at $20 million. Prior to initiating an assessment, the Corporation would submit the proposed assessment to the members of the industry impacted by the referendum, and the assessment would have to be approved by a majority of those members. In conducting the referendum, the Corporation would be required to provide written or electronic notice not less than 60 days before the date of the referendum, describe the assessment, and determine the results of the referendum based on a voting structure weighted according to each business entity's relative share of the aggregate annual U.S. international travel and tourism revenue per business entity, treating all related entities as a single entity. The Committee intends that the Corporation work with the DOC to designate discrete sectors of the travel and tourism industry as "business entities" for purpose of the referendum and to use Federal government revenue estimates to assess the aggregate annual U.S. international travel and tourism revenue for each business entity. The intent of the weighted voting structure is to allow businesses to influence the referendum in a manner directly proportionate to the percent that they would contribute to the related assessment. Business sectors with greater international travel and tourism revenues would receive greater weight in voting in proportion to the greater financial burden they would contribute. The Committee further intends that the Corporation would be responsible for organizing and managing the process for notifying and polling the industry members subject to an assessment. Only those industry members who have been contacted and afforded the opportunity to participate in the referendum would be subject to the assessment. The Corporation would establish a means of collecting the assessment and would be authorized to bring suit in Federal court to compel compliance with a properly authorized assessment. Pending disbursement of the funds assessed, the Corporation would be allowed to invest the funds in an interest-bearing account.

Section 7. Under Secretary of Commerce for Travel Promotion.

The section would establish the Office of Travel Promotion in the Department of Commerce headed by the Under Secretary of Travel Promotion. The Under Secretary would be a citizen of the United States and have experience in a field directly related to the promotion of travel in the United States. The Under Secretary would serve as liaison to the Corporation, support and develop programs

to increase the number of international visitors to the United States, work with the Corporation and the Secretaries of State and Homeland Security to ensure that international visitors are processed efficiently and in a respectful manner, supervise activities of the OTTI, support State, regional, and private sector initiatives to promote travel to and within the United States, and work to enhance the entry and departure experience for international visitors. Within a year after the date of enactment, the Under Secretary would transmit a report to Congress describing the Under Secretary's work with the State Department and DHS to ensure that international visitors are processed efficiently.

Section 8. Research Program.

The section would amend the International Travel Act of 1916 and require OTTI to expand its research and development activities in support of promoting international travel to the United States, including expanding access to official Mexican travel surveys data, revising the Commerce Department's Survey of International Travelers, developing estimates of international travel exports on a State-by-State basis, and evaluating the success of the Corporation in achieving the objective set forth in the Act. It would also authorize such sums as would be necessary to carry out this section.

Section 9. Model Ports-of-Entry.

The section would direct the Secretary of Homeland Security to establish a model ports-of-entry program for the purpose of providing a more efficient and welcoming international arrival process and to implement the program initially at the 20 U.S. international airports that have the highest number of foreign visitors arriving annually as determined by the most recent data collected by the CBP available on date of enactment. The program would include enhanced queue management, assistance for foreign visitors once they have been admitted to the United States, and instructional videos. The section would further direct the Secretary of Homeland Security, subject to appropriations, to employ not fewer than an additional 200 CBP officers not later than the end of FY 2008. The officers would be used to address staff shortages at the 20 U.S. international airports that have the highest number of foreign visitors arriving annually.

Section 10. Definitions.

The section would define the terms "Board", "Corporation", "fund", and "Secretary" as used in the Act.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 5

PART III—EMPLOYEES

SUBPART D. PAY AND ALLOWANCES

CHAPTER 53. PAY RATES AND SYSTEMS

§ 5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Secretary of Defense.
Deputy Secretary of State.
Deputy Secretary of State for Management and Resources.
Administrator, Agency for International Development.
Administrator of the National Aeronautics and Space Administration.
Deputy Secretary of Veterans Affairs.
Deputy Secretary of Homeland Security.
Deputy Secretary of the Treasury.
Deputy Secretary of Transportation.
Chairman, Nuclear Regulatory Commission.
Chairman, Council of Economic Advisers.
Director of the Office of Science and Technology.
Director of Central Intelligence.
Secretary of the Air Force.
Secretary of the Army.
Secretary of the Navy.
Administrator, Federal Aviation Administration.
Director of the National Science Foundation.
Deputy Attorney General.
Deputy Secretary of Energy.
Deputy Secretary of Agriculture.
Director of the Office of Personnel Management.
Administrator, Federal Highway Administration.
Administrator of the Environmental Protection Agency.
Under Secretary of Defense for Acquisition, Technology, and Logistics.

Deputy Secretary of Labor.
Deputy Director of the Office of Management and Budget.
Independent Members, Thrift Depositor Protection Oversight Board.
Deputy Secretary of Health and Human Services.
Deputy Secretary of the Interior.
Deputy Secretary of Education.
Deputy Secretary of Housing and Urban Development.
Deputy Director for Management, Office of Management and Budget.
Director of the Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development.
Deputy Commissioner of Social Security, Social Security Administration.
Administrator of the Community Development Financial Institutions Fund.
Deputy Director of National Drug Control Policy.
Members, Board of Governors of the Federal Reserve System.
The Under Secretary of Transportation for Security.
Under Secretary of Transportation for Policy.
Chief Executive Officer, Millennium Challenge Corporation.
Principal Deputy Director of National Intelligence.
Director of the National Counterterrorism Center.
Director of the National Counter Proliferation Center.
Administrator of the Federal Emergency Management Agency.
The Under Secretary of Commerce for Travel Promotion.

IMMIGRATION AND NATIONALITY ACT

[8 U.S.C. 1187]

§ 1187. Visa waiver program for certain visitors

(a) ESTABLISHMENT OF PROGRAM.—The Attorney General and the Secretary of State are authorized to establish a program (hereinafter in this section referred to as the "program") under which the requirement of paragraph (7)(B)(i)(II) of section 212(a) may be waived by the Attorney General, in consultation with the Secretary of State and in accordance with this section, in the case of an alien who meets the following requirements:

(1) SEEKING ENTRY AS TOURIST FOR 90 DAYS OR LESS.—The alien is applying for admission during the program as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding 90 days.

(2) NATIONAL OF PROGRAM COUNTRY.—The alien is a national of, and presents a passport issued by, a country which—

(A) extends (or agrees to extend), either on its own or in conjunction with one or more other countries that are described in subparagraph (B) and that have established with it a common area for immigration admissions, reciprocal privileges to citizens and nationals of the United States, and

(B) is designated as a [pilot] program country under subsection (c).

(3) MACHINE READABLE PASSPORT.—

(A) In general. Except as provided in subparagraph (B), on or after October 1, 2003, the alien at the time of application for admission is in possession of a valid unexpired machine-readable passport that satisfies the internationally accepted standard for machine readability.

(B) Limited waiver authority. For the period beginning October 1, 2003, and ending September 30, 2007, the Secretary of State may waive the requirement of subparagraph (A) with respect to nationals of a program country (as designated under subsection (c)), if the Secretary of State finds that the program country—

(i) is making progress toward ensuring that passports meeting the requirement of subparagraph (A) are generally available to its nationals; and

(ii) has taken appropriate measures to protect against misuse of passports the country has issued that do not meet the requirement of subparagraph (A).

(4) EXECUTES IMMIGRATION FORMS.—The alien before the time of such admission completes such immigration form as the Attorney General shall establish.

(5) ENTRY INTO THE UNITED STATES.—If arriving by sea or air, the alien arrives at the port of entry into the United States on a carrier, including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations which has entered into an agreement with the Attorney General pursuant to subsection (e). The Attorney General is authorized to require a carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a domestic corporation conducting operations under part 91 of that title, to give suitable and proper bond, in such reasonable amount and containing such conditions as the Attorney General may deem sufficient to ensure compliance with the indemnification requirements of this section, as a term of such an agreement.

(6) NOT A SAFETY THREAT.—The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

(7) NO PREVIOUS VIOLATION.—If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

(8) ROUND-TRIP TICKET.—The alien is in possession of a round-trip transportation ticket (unless this requirement is waived by the Attorney General under regulations or the alien is arriving at the port of entry on an aircraft operated under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations).

(9) AUTOMATED SYSTEM CHECK.—The identity of the alien has been checked using an automated electronic database con-

taining information about the inadmissibility of aliens to uncover any grounds on which the alien may be inadmissible to the United States, and no such ground has been found.

Operators of aircraft under part 135 of title 14, Code of Federal Regulations, or operators of noncommercial aircraft that are owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, carrying any alien passenger who will apply for admission under this section shall furnish such information as the Attorney General by regulation shall prescribe as necessary for the identification of any alien passenger being transported and for the enforcement of the immigration laws. Such information shall be electronically transmitted not less than one hour prior to arrival at the port of entry for purposes of checking for inadmissibility using the automated electronic database.

(b) WAIVER OF RIGHTS.—An alien may not be provided a waiver under the program unless the alien has waived any right—

(1) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or

(2) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

(c) DESIGNATION OF PROGRAM COUNTRIES.—

(1) IN GENERAL.—The Attorney General, in consultation with the Secretary of State, "may designate" any country as a program country if it meets the requirements of paragraph (2).

(2) QUALIFICATIONS.—Except as provided in subsection (f), a country may not be designated as a program country unless the following requirements are met:

(A) LOW NONIMMIGRANT VISA REFUSAL RATE.—Either—

(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during—

(I) the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years; and

(II) either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year; or

(ii) such refusal rate for nationals of that country during the previous full fiscal year was less than 3.0 percent.

(B) MACHINE READABLE PASSPORT PROGRAM.—

(i) IN GENERAL.—Subject to clause (ii), the government of the country certifies that it issues to its citizens machine-readable passports that satisfy the internationally accepted standard for machine readability.

(ii) DEADLINE FOR COMPLIANCE FOR CERTAIN COUNTRIES.—In the case of a country designated as a program country under this subsection prior to May 1,

2000, as a condition on the continuation of that designation, the country—

(I) shall certify, not later than October 1, 2000, that it has a program to issue machine-readable passports to its citizens not later than October 1, 2003; and

(II) shall satisfy the requirement of clause (i) not later than October 1, 2003.

(C) LAW ENFORCEMENT AND SECURITY INTERESTS.—The Attorney General, in consultation with the Secretary of State—

(i) evaluates the effect that the country's designation would have on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

(ii) determines that such interests would not be compromised by the designation of the country; and

(iii) submits a written report to the Committee on the Judiciary and the Committee on International Relations of the House of Representatives and the Committee on the Judiciary and the Committee on Foreign Relations of the Senate regarding the country's qualification for designation that includes an explanation of such determination.

(D) REPORTING PASSPORT THEFTS.—The government of the country certifies that it reports to the United States Government on a timely basis the theft of blank passports issued by that country.

(3) CONTINUING AND SUBSEQUENT QUALIFICATIONS.—For each fiscal year after the initial period—

(A) CONTINUING QUALIFICATION.—In the case of a country which was a program country in the previous fiscal year, a country may not be designated as a program country unless the sum of—

(i) the total of the number of nationals of that country who were denied admission at the time of arrival or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission, was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

(B) NEW COUNTRIES.—In the case of another country, the country may not be designated as a program country unless the following requirements are met:

(i) LOW NONIMMIGRANT VISA REFUSAL RATE IN PREVIOUS 2-YEAR PERIOD.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

(ii) LOW NONIMMIGRANT VISA REFUSAL RATE IN EACH OF THE 2 PREVIOUS YEARS.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

(4) Initial period. For purposes of paragraphs (2) and (3), the term "initial period" means the period beginning at the end of the 30-day period described in subsection (b)(1) and ending on the last day of the first fiscal year which begins after such 30-day period.

(5) WRITTEN REPORTS ON CONTINUING QUALIFICATION; DESIGNATION TERMINATIONS.—

(A) PERIODIC EVALUATIONS.—

(i) IN GENERAL.—The Attorney General, in consultation with the Secretary of State, periodically (but not less than once every 2 years)—

(I) shall evaluate the effect of each program country's continued designation on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

(II) shall determine, based upon the evaluation in subclause (I), whether any such designation ought to be continued or terminated under subsection (d); and

(III) shall submit a written report to the Committee on the Judiciary and the Committee on International Relations of the House of Representatives and the Committee on the Judiciary and the Committee on Foreign Relations of the Senate regarding the continuation or termination of the country's designation that includes an explanation of such determination and the effects described in subclause (I).

(ii) EFFECTIVE DATE.—A termination of the designation of a country under this subparagraph shall take effect on the date determined by the Attorney General, in consultation with the Secretary of State.

(iii) REDESIGNATION.—In the case of a termination under this subparagraph, the Attorney General shall

redesignate the country as a program country, without regard to subsection (f) or paragraph (2) or (3), when the Attorney General, in consultation with the Secretary of State, determines that all causes of the termination have been eliminated.

(B) EMERGENCY TERMINATION.—

(i) IN GENERAL.—In the case of a program country in which an emergency occurs that the Attorney General, in consultation with the Secretary of State, determines threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States), the Attorney General shall immediately terminate the designation of the country as a program country.

(ii) DEFINITION.—For purposes of clause (i), the term "emergency" means—

(I) the overthrow of a democratically elected government;

(II) war (including undeclared war, civil war, or other military activity) on the territory of the program country;

(III) a severe breakdown in law and order affecting a significant portion of the program country's territory;

(IV) a severe economic collapse in the program country; or

(V) any other extraordinary event in the program country that threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States) and where the country's participation in the program could contribute to that threat.

(iii) REDESIGNATION.—The Attorney General may redesignate the country as a program country, without regard to subsection (f) or paragraph (2) or (3), when the Attorney General, in consultation with the Secretary of State, determines that—

(I) at least 6 months have elapsed since the effective date of the termination;

(II) the emergency that caused the termination has ended; and

(III) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the period of termination under this subparagraph was less than 3.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during such period.

(C) TREATMENT OF NATIONALS AFTER TERMINATION.—For purposes of this paragraph—

(i) nationals of a country whose designation is terminated under subparagraph (A) or (B) shall remain eli-

gible for a waiver under subsection (a) until the effective date of such termination; and

(ii) a waiver under this section that is provided to such a national for a period described in subsection (a)(1) shall not, by such termination, be deemed to have been rescinded or otherwise rendered invalid, if the waiver is granted prior to such termination.

(6) COMPUTATION OF VISA REFUSAL RATES.—For purposes of determining the eligibility of a country to be designated as a program country, the calculation of visa refusal rates shall not include any visa refusals which incorporate any procedures based on, or are otherwise based on, race, sex, or disability, unless otherwise specifically authorized by law or regulation. No court shall have jurisdiction under this paragraph to review any visa refusal, the denial of admission to the United States of any alien by the Attorney General, the Secretary's computation of the visa refusal rate, or the designation or nondesignation of any country.

(7) VISA WAIVER INFORMATION.—

(A) IN GENERAL.—In refusing the application of nationals of a program country for United States visas, or the applications of nationals of a country seeking entry into the visa waiver program, a consular officer shall not knowingly or intentionally classify the refusal of the visa under a category that is not included in the calculation of the visa refusal rate only so that the percentage of that country's visa refusals is less than the percentage limitation applicable to qualification for participation in the visa waiver program.

(B) REPORTING REQUIREMENT.—On May 1 of each year, for each country under consideration for inclusion in the visa waiver program, the Secretary of State shall provide to the appropriate congressional committees—

(i) the total number of nationals of that country that applied for United States visas in that country during the previous calendar year;

(ii) the total number of such nationals who received United States visas during the previous calendar year;

(iii) the total number of such nationals who were refused United States visas during the previous calendar year;

(iv) the total number of such nationals who were refused United States visas during the previous calendar year under each provision of this Act under which the visas were refused; and

(v) the number of such nationals that were refused under section 214(b) as a percentage of the visas that were issued to such nationals.

(C) CERTIFICATION.—Not later than May 1 of each year, the United States chief of mission, acting or permanent, to each country under consideration for inclusion in the visa waiver program shall certify to the appropriate congressional committees that the information described in subparagraph (B) is accurate and provide a copy of that certification to those committees.

(D) CONSIDERATION OF COUNTRIES IN THE VISA WAIVER PROGRAM.—Upon notification to the Attorney General that a country is under consideration for inclusion in the visa waiver program, the Secretary of State shall provide all of the information described in subparagraph (B) to the Attorney General.

(E) DEFINITION.—In this paragraph, the term "appropriate congressional committees" means the Committee on the Judiciary and the Committee on Foreign Relations of the Senate and the Committee on the Judiciary and the Committee on International Relations of the House of Representatives.

(d) AUTHORITY.—Notwithstanding any other provision of this section, the Attorney General, in consultation with the Secretary of State, may for any reason (including national security) refrain from waiving the visa requirement in respect to nationals of any country which may otherwise qualify for designation or may, at any time, rescind any waiver or designation previously granted under this section.

(e) CARRIER AGREEMENTS.—

(1) IN GENERAL.—The agreement referred to in subsection (a)(4) is an agreement between a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title and the Attorney General under which the carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the program—

(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the 90-day period described in subsection (a)(1)(A);

(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under the program;

(C) to be subject to the imposition of fines resulting from the transporting into the United States of a national of a designated country without a passport pursuant to regulations promulgated by the Attorney General; and

(D) to collect, provide, and share passenger data as required under subsection (h)(1)(B).

(2) TERMINATION OF AGREEMENTS.—The Attorney General may terminate an agreement under paragraph (1) with five days' notice to the carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title for the failure by a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting

operations under part 91 of that title to meet the terms of such agreement.

(3) BUSINESS AIRCRAFT REQUIREMENTS.—

(A) IN GENERAL.—For purposes of this section, a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations that owns or operates a noncommercial aircraft is a corporation that is organized under the laws of any of the States of the United States or the District of Columbia and is accredited by or a member of a national organization that sets business aviation standards. The Attorney General shall prescribe by regulation the provision of such information as the Attorney General deems necessary to identify the domestic corporation, its officers, employees, shareholders, its place of business, and its business activities.

(B) COLLECTIONS.—In addition to any other fee authorized by law, the Attorney General is authorized to charge and collect, on a periodic basis, an amount from each domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, for nonimmigrant visa waiver admissions on noncommercial aircraft owned or operated by such domestic corporation equal to the total amount of fees assessed for issuance of nonimmigrant visa waiver arrival/departure forms at land border ports of entry. All fees collected under this paragraph shall be deposited into the Immigration User Fee Account established under section 286(h).

(f) DURATION AND TERMINATION OF DESIGNATION.—

(1) IN GENERAL.—

(A) DETERMINATION AND NOTIFICATION OF DISQUALIFICATION RATE.—Upon determination by the Attorney General that a program country's disqualification rate is 2 percent or more, the Attorney General shall notify the Secretary of State.

(B) PROBATIONARY STATUS.—If the program country's disqualification rate is greater than 2 percent but less than 3.5 percent, the Attorney General shall place the program country in probationary status for a period not to exceed 2 full fiscal years following the year in which the determination under subparagraph (A) is made.

(C) TERMINATION OF DESIGNATION.—Subject to paragraph (3), if the program country's disqualification rate is 3.5 percent or more, the Attorney General shall terminate the country's designation as a program country effective at the beginning of the second fiscal year following the fiscal year in which the determination under subparagraph (A) is made.

(2) TERMINATION OF PROBATIONARY STATUS.—

(A) IN GENERAL.—If the Attorney General determines at the end of the probationary period described in paragraph (1)(B) that the program country placed in probationary status under such paragraph has failed to develop a machine-readable passport program as required by section (c)(2)(C), or has a disqualification rate of 2 percent or more, the At-

torney General shall terminate the designation of the country as a program country. If the Attorney General determines that the program country has developed a machine-readable passport program and has a disqualification rate of less than 2 percent, the Attorney General shall redesignate the country as a program country.

(B) EFFECTIVE DATE.—A termination of the designation of a country under subparagraph (A) shall take effect on the first day of the first fiscal year following the fiscal year in which the determination under such subparagraph is made. Until such date, nationals of the country shall remain eligible for a waiver under subsection (a).

(3) NONAPPLICABILITY OF CERTAIN PROVISIONS.—Paragraph (1)(C) shall not apply unless the total number of nationals of a program country described in paragraph (4)(A) exceeds 100.

(4) DEFINITION.—For purposes of this subsection, the term "disqualification rate" means the percentage which—

(A) the total number of nationals of the program country who were—

(i) denied admission at the time of arrival or withdrew their application for admission during the most recent fiscal year for which data are available; and

(ii) admitted as nonimmigrant visitors during such fiscal year and who violated the terms of such admission; bears to

(B) the total number of nationals of such country who applied for admission as nonimmigrant visitors during such fiscal year.

(5) FAILURE TO REPORT PASSPORT THEFTS.—If the Attorney General and the Secretary of State jointly determine that the program country is not reporting the theft of blank passports, as required by subsection (c)(2)(D), the Attorney General shall terminate the designation of the country as a program country.

(g) VISA APPLICATION SOLE METHOD TO DISPUTE DENIAL OF WAIVER BASED ON A GROUND OF INADMISSIBILITY.—In the case of an alien denied a waiver under the program by reason of a ground of inadmissibility described in section 212(a) that is discovered at the time of the alien's application for the waiver or through the use of an automated electronic database required under subsection (a)(9), the alien may apply for a visa at an appropriate consular office outside the United States. There shall be no other means of administrative or judicial review of such a denial, and no court or person otherwise shall have jurisdiction to consider any claim attacking the validity of such a denial.

(h) USE OF INFORMATION TECHNOLOGY SYSTEMS.—

(1) AUTOMATED ENTRY-EXIT CONTROL SYSTEM.—

(A) SYSTEM.—Not later than October 1, 2001, the Attorney General shall develop and implement a fully automated entry and exit control system that will collect a record of arrival and departure for every alien who arrives and departs by sea or air at a port of entry into the United States and is provided a waiver under the program.

(B) REQUIREMENTS.—The system under subparagraph (A) shall satisfy the following requirements:

(i) DATA COLLECTION BY CARRIERS.—Not later than October 1, 2001, the records of arrival and departure described in subparagraph (A) shall be based, to the maximum extent practicable, on passenger data collected and electronically transmitted to the automated entry and exit control system by each carrier that has an agreement under subsection (a)(4).

(ii) DATA PROVISION BY CARRIERS.—Not later than October 1, 2002, no waiver may be provided under this section to an alien arriving by sea or air at a port of entry into the United States on a carrier unless the carrier is electronically transmitting to the automated entry and exit control system passenger data determined by the Attorney General to be sufficient to permit the Attorney General to carry out this paragraph.

(iii) CALCULATION.—The system shall contain sufficient data to permit the Attorney General to calculate, for each program country and each fiscal year, the portion of nationals of that country who are described in subparagraph (A) and for whom no record of departure exists, expressed as a percentage of the total number of such nationals who are so described.

(C) REPORTING.—

(i) PERCENTAGE OF NATIONALS LACKING DEPARTURE RECORD.—As part of the annual report required to be submitted under section 110(e)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the Attorney General shall include a section containing the calculation described in subparagraph (B)(iii) for each program country for the previous fiscal year, together with an analysis of that information.

(ii) SYSTEM EFFECTIVENESS.—Not later than December 31, 2004, the Attorney General shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the following:

(I) The conclusions of the Attorney General regarding the effectiveness of the automated entry and exit control system to be developed and implemented under this paragraph.

(II) The recommendations of the Attorney General regarding the use of the calculation described in subparagraph (B)(iii) as a basis for evaluating whether to terminate or continue the designation of a country as a program country. The report required by this clause may be combined with the annual report required to be submitted on that date under section 110(e)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

(2) AUTOMATED DATA SHARING SYSTEM.—

(A) SYSTEM.—The Attorney General and the Secretary of State shall develop and implement an automated data sharing system that will permit them to share data in elec-

tronic form from their respective records systems regarding the admissibility of aliens who are nationals of a program country.

(B) REQUIREMENTS.—The system under subparagraph (A) shall satisfy the following requirements:

(i) SUPPLYING INFORMATION TO IMMIGRATION OFFICERS CONDUCTING INSPECTIONS AT PORTS OF ENTRY.—Not later than October 1, 2002, the system shall enable immigration officers conducting inspections at ports of entry under section 235 to obtain from the system, with respect to aliens seeking a waiver under the program—

(I) any photograph of the alien that may be contained in the records of the Department of State or the Service; and

(II) information on whether the alien has ever been determined to be ineligible to receive a visa or ineligible to be admitted to the United States.

(ii) SUPPLYING PHOTOGRAPHS OF INADMISSIBLE ALIENS.—The system shall permit the Attorney General electronically to obtain any photograph contained in the records of the Secretary of State pertaining to an alien who is a national of a program country and has been determined to be ineligible to receive a visa.

(iii) MAINTAINING RECORDS ON APPLICATIONS FOR ADMISSION.—The system shall maintain, for a minimum of 10 years, information about each application for admission made by an alien seeking a waiver under the program, including the following:

(I) The name or Service identification number of each immigration officer conducting the inspection of the alien at the port of entry.

(II) Any information described in clause (i) that is obtained from the system by any such officer.

(III) The results of the application.

(3) ELECTRONIC TRAVEL AUTHORIZATION SYSTEM.—

(A) SYSTEM.—The Secretary of Homeland Security, in consultation with the Secretary of State, is authorized to develop and implement a fully automated electronic travel authorization system to collect such basic biographical information as the Secretary of Homeland Security determines to be necessary to determine, in advance of travel, the eligibility of an alien to travel to the United States under the visa waiver program.

(B) FEES.—The Secretary of Homeland Security may charge a fee for the use of the system, which shall be—

(i) set at a level that will ensure recovery of the full costs of providing and administering the system;

(ii) available to pay the costs incurred to administer the system; and

(iii) include an amount, initially not more than $10, for transfer to the Travel Promotion Fund established by section 4 of the Travel Promotion Act of 2007 necessary to ensure that the Corporation for Travel Pro-

motion established by section 2 of that Act is fully funded.

(C) VALIDITY.—

(i) PERIOD.—The Secretary of Homeland Security, in consultation with the Secretary of State shall prescribe regulations that provide for a period, not to exceed 3 years, during which a determination of eligibility to travel under the program will be valid. Notwithstanding any other provision under this section, the Secretary of Homeland Security may revoke any such determination at any time and for any reason.

(ii) LIMITATION.—A determination that an alien is eligible to travel to the United States under the visa waiver program is not a determination that the alien is admissible to the United States.

(iii) JUDICIAL REVIEW.—Notwithstanding any other provision of law, no court shall have jurisdiction to review an eligibility determination under the system.

(D) REPORT.—Not later than 60 days before publishing notice regarding the implementation of the system in the Federal Register, the Secretary of Homeland Security shall submit a report regarding the implementation of the system to the Congress.

INTERNATIONAL TRAVEL ACT OF 1961

TITLE II—DUTIES

SEC. 201. POWERS AND DUTIES OF SECRETARY OF COMMERCE

[22 U.S.C. 2122]

In order to carry out the national tourism policy established in section 101(b) and by the United States National Tourism Organization Act of 1996, the Secretary of ⟦Commerce (hereafter in this Act referred to as the "Secretary")⟧ *Commerce, acting through the Under Secretary for Travel Promotion,* shall develop and implement a comprehensive plan to perform critical tourism functions which, in the determination of the Secretary, are not being carried out by the United States National Tourism Organization or other private sector entities or State governments. Such plan may include programs to—

(1) collect and publish comprehensive international travel and tourism statistics and other marketing information;

(2) design, implement, and publish international travel and tourism forecasting models;

(3) facilitate the reduction or elimination of barriers to international travel and tourism; and

(4) work with the United States National Tourism Organization, the Tourism Policy Council, State tourism agencies, and Federal agencies in—

(A) coordinating the Federal implementation of a national travel and tourism policy;

(B) representing the United States' international travel and tourism interests to foreign governments; and

(C) maintaining United States participation in international travel and tourism trade shows and fairs until

such activities can be transferred to such Organization and other private sector entities.

SEC. 202. OFFICE OF TRAVEL PROMOTION.

(a) OFFICE ESTABLISHED.—There is established within the Department of Commerce an office to be known as the Office of Travel Promotion.

(b) UNDER SECRETARY FOR TRAVEL PROMOTION.—

(1) IN GENERAL.—The head of the Office shall be the Under Secretary of Commerce for Travel Promotion. The Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—The Under Secretary shall—

(A) be a citizen of the United States; and

(B) have experience in a field directly related to the promotion of travel in the United States.

(3) LIMITATION ON INVESTMENTS.—The Under Secretary may not own stock in, or have a direct or indirect beneficial interest in, a corporation or other enterprise engaged in the travel, transportation, or hospitality business or in a corporation or other enterprise that owns or operates theme park or other entertainment facility.

(c) FUNCTION.—The Under Secretary shall—

(1) serve as liaison to the Corporation for Travel Promotion established by section 2 of the Travel Promotion Act of 2007 and support and encourage the development of programs to increase the number of international visitors to the United States for business, leisure, educational, medical, exchange, and other purposes;

(2) work with the Corporation, the Secretary of State, and the Secretary of Homeland Security—

(A) to disseminate information more effectively to potential international visitors about documentation and procedures required for admission to the United States as a visitor; and

(B) to ensure that arriving international visitors are processed efficiently and in a welcoming and respectful manner;

(3) support State, regional, and private sector initiatives to promote travel to and within the United States;

(4) supervise the operations of the Office of Travel and Tourism Industries; and

(5) enhance the entry and departure experience for international visitors.

(d) REPORTS TO CONGRESS.—Within a year after the date of enactment of the Travel Promotion Act of 2007, and periodically thereafter as appropriate, the Under Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce describing the Under Secretary's work with the Corporation, the Secretary of State, and the Secretary of Homeland Security to carry out subsection (c)(2).

SEC. 203. RESEARCH PROGRAM.

(a) IN GENERAL.—The Office of Travel and Tourism Industries shall expand and continue its research and development activities

in connection with the promotion of international travel to the United States, including—

(1) expanding access to the official Mexican travel surveys data to provide the States with traveler characteristics and visitation estimates for targeted marketing programs;

(2) revising the Commerce Department's Survey of International Travelers questionnaire and report formats to accommodate a new survey instrument, expanding the respondent base, improving response rates, and improving market coverage;

(3) developing estimates of international travel exports (expenditures) on a State-by-State basis to enable each State to compare its comparative position to national totals and other States;

(4) evaluate the success of the Corporation in achieving its objectives and carrying out the purposes of the Travel Promotion Act of 2007; and

(5) research to support the annual report required by section 202(d) of this Act.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce for fiscal years 2008 through 2012 such sums as may be necessary to carry out this section.

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